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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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Investigation by the Department on its own motion )  
as to the propriety of the rates and charges set forth ) D.T.E. 98-57 - Phase I  
in revisions to the following tariff: M.D.T.E. No. 17, )  
filed with the Department on October 5, 2000 and )  
November 2, 2000 by Verizon New England, Inc. )  
d/b/a Verizon Massachusetts. ) November 20, 2000

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HEARING OFFICER RULING ON MOTION FILED BY  
AT&T COMMUNICATIONS OF NEW ENGLAND, INC.  
TO COMPEL RESPONSES TO INFORMATION REQUESTS  
I. BACKGROUND

In accordance with the Procedural Schedule issued in this docket on September 14, 2000, AT&T Communications of New England, Inc. ("AT&T") propounded on October 20, 2000 its Ninth Set of Information Requests on Verizon New England, Inc. d/b/a Verizon Massachusetts ("VZ-MA"). VZ-MA provided responsive answers to some of AT&T's information requests on November 3, 2000, objected to others, and has yet to file answers to all information requests propounded. On November 7, 2000, AT&T filed a Motion to Compel Responses ("Motion") to specific information requests, namely ATT-VZ 9-4, ATT-VZ 9-5, ATT-VZ 9-9, and ATT-VZ 9-10. VZ-MA replied to AT&T's Motion on November 14, 2000.

## II. POSITIONS OF THE PARTIES

### A. AT&T

AT&T argues that the information requests that are the subject of its Motion seek information that is highly relevant to a full and fair determination of the matters that are still at issue in this docket (Motion at 2). First, AT&T notes that the Department's Order issued on September 7, 2000 in Phase I of this docket ("Phase I Order") invited participants to raise the issue of whether the current 76-business day provisioning interval for physical collocation, prescribed by the Department in its March 24, 2000 Order ("Tariff No. 17 Order"), should be reduced in light of the Federal Communications Commission's ("FCC") Collocation Reconsideration Order. (1)

#### Untitled

AT&T maintains that ATT-VZ 9-4 and 9-5 were propounded in an attempt to determine whether there were any reasons why VZ-MA would not be able to meet a provisioning interval that was shorter than the current 76-business day interval (Motion at 2). Accordingly, AT&T maintains that VZ-MA's objections -- that the Department had already ruled on the issue of collocation provisioning intervals -- is groundless (Motion at 2-3).

Second, AT&T states that VZ-MA did not object to ATT-VZ 9-9, but ignored subparts (b) and (c) without providing any basis for doing so (id. at 3). Because VZ-MA did not object to ATT-VZ 9-9 and, according to AT&T, since there would not be any grounds for such

objection, AT&T asks the Department to compel VZ-MA to provide a responsive answer to all subparts of ATT-VZ 9-9 (id.).

Last, AT&T argues that VZ-MA refused to answer ATT-VZ 9-10, claiming that it exceeded the scope of the Hearing Officer's September 14, 2000 Procedural Schedule (Motion at 3-4). AT&T notes that the September 14 Procedural Schedule indicates that the areas discussed in the Hearing Officer's July 12, 2000 Memorandum, which specifically included Adjacent Collocation, were appropriate topics for further discovery (id. at 4). Accordingly, AT&T requests that the Department direct VZ-MA to provide a responsive answer to ATT-VZ 9-10 (id.).

#### B. VZ-MA

With respect to ATT-VZ 9-4 and 9-5 and the issue of the collocation provisioning interval, VZ-MA states that the Department's Phase I Order makes clear that parties would petition the Department to reconsider the 76 business day provisioning standard (VZ-MA Reply at 3). However, AT&T is attempting to interject this as an issue for investigation by manipulating the discovery process since, VZ-MA claims, these discovery requests cannot reasonably lead to the discovery of relevant information within the scope of this proceeding (id.). VZ-MA urges the Department not to allow this "back-door" approach (id.).

Moreover, VZ-MA argues that AT&T ignores the fact that the FCC granted Verizon's request for waiver of the 90 calendar day interval established in the Collocation Reconsideration Order (id.). Specifically, in the FCC's Memorandum Opinion and Order, (2) VZ-MA states that the FCC permits Verizon to file tariff amendments introducing the 76 business day interval in lieu of the 90 calendar day interval proscribed by the Collocation Reconsideration Order (id.). Therefore, VZ-MA maintains that there is no basis for investigating the Department's approved 76 business day provisioning interval in this proceeding, and the Department should reject the Motion (VZ-MA Reply at 3).

Regarding ATT-VZ 9-9 and 9-10, VZ-MA states that it will provide supplemental answers to these requests, and thus there is no need for the Department to grant AT&T's Motion with respect to these discovery requests (VZ-MA Reply at 4).

#### III. ANALYSIS AND FINDINGS

The Department, in the Phase I Order at 69, explicitly stated it would be willing to consider the appropriateness of modifying the Department-approved 76 business day provisioning interval for physical collocation arrangements to conform with the FCC's 90 calendar day interval should a party so request. As noted by VZ-MA, AT&T has not specifically requested the Department to consider modification of the current 76 business day interval. Even though the Department has clearly indicated its willingness to consider this issue, the scope of issues under consideration in the ongoing Phase I of this docket were outlined in prior procedural memoranda in this docket. See Hearing Officer Memoranda of July 12, September 14, and November 7, 2000. Expanding the scope of the Phase I proceedings three weeks prior to the commencement of evidentiary hearings, and subsequent to VZ-MA's filing of direct testimony, to include a reexamination of the approved 76 business day physical collocation provisioning interval, could create unnecessary confusion and delay.

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Should AT&T wish to pursue this issue, it should file a petition with the Department, whereupon the Department will determine how best to handle its consideration of possible modification of the collocation provisioning interval. Accordingly, AT&T's Motion to Compel responses to ATT-VZ 9-4 and 9-5 is hereby denied.

Notwithstanding the above, nothing in the Memorandum Opinion and Order bars the Department from modifying the approved 76 business day collocation provisioning interval upon a petition, or upon its own motion. The FCC's grant to Verizon of a waiver of the requirement to comply with the 90 calendar day provisioning interval mandated in the Collocation Reconsideration Order, conditioned upon Verizon's implementation of a 76 business day interval, applies where neither the state nor the parties to an interconnection agreement set a different physical collocation provisioning standard. See Memorandum Opinion and Order at ¶ 17. Here, the Department has set its standard, and the Memorandum Opinion and Order is silent on the issue of modification of that state-set standard.

Turning to ATT-VZ 9-9 and 9-10, the hearing officer notes that VZ-MA filed its supplemental responses on November 16, 2000. Thus, AT&T's Motion to Compel responses to ATT-VZ 9-9 and 9-10 is moot and is hereby denied upon that basis. However, the hearing officer notes that there remain six outstanding responses to information requests propounded on October 20, 2000. (3) In addition, AT&T propounded additional information requests on VZ-MA on November 8 and November 13, 2000. Given the short time interval remaining until the commencement of the Phase I evidentiary hearings, the hearing officer directs VZ-MA to file its responses to the October 20 and November 8, 2000 information requests immediately but no later than November 24, 2000, and reminds VZ-MA that responses to the information requests propounded on November 13, 2000 also must be filed on or before November 24, 2000. Finally, the hearing officer directs all parties to this proceeding to file complete responses, within 10 calendar days of issuance, to any and all additional information requests propounded prior to the close of discovery.

#### IV. RULING

Accordingly, after due consideration, the Hearing Officer hereby denies the Motion to Compel Responses to Information Requests filed by AT&T Communications of New England, Inc. Under the provision of 220 C.M.R. § 1.06(6)(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation by November 27, 2000, at 5:00 p.m. A copy of this Ruling must accompany any appeal. Any response to any appeal must be filed by December 1, 2000, at 5:00 p.m.

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Date Tina W. Chin, Hearing Officer

1. In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 00-297 (rel. August 10, 2000) ("Collocation Reconsideration Order").

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2. In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Order, DA 00-2528 (rel. November 7, 2000) ("Memorandum Opinion and Order").

3. To date, responses to the following information requests propounded on October 20, 2000 are still outstanding: ATT-VZ 9-14, ATT-VZ 9-28, ATT-VZ 9-35, ATT-VZ 9-37; and, Rhythms Links-VZ 1-3 and 1-4.